

REMARKS

Applicants respectfully requests entry of the amendments and remarks submitted herein. Claim 24 is amended, and claim 6 is canceled. Therefore, claims 3-5, 7-9, 11-13, and 24-31 are currently pending.

Claim 24 has been amended to delete reference to the tail region comprising amino acids 1-45 of SEQ ID NO:1, and to the polynucleotide encoding a chimeric Ad fiber polypeptide comprises nucleotides 1-135 of SEQ ID NO:12. Claim 24 has been amended to recite that the polynucleotide comprises SEQ ID NO:12 (which is supported by claim 7), comprises nucleotides 1-564 of SEQ ID NO:12 (which is supported by claim 8), comprises nucleotides 1-135 of SEQ ID NO:12 (which is supported by claim 9), or comprises nucleotides 136-564 of SEQ ID NO:12 (which is supported by claim 11). The Examiner indicated that claims 7, 8 and 11 were free of the prior art.

Examiner Interview

Applicants' Representative Ann Viksnins wishes to thank Examiner Blumel for the courtesies extended to her during the telephone interview of February 13, 2008. During the interview, possible claim amendments were discussed.

Rejection under 35 U.S.C. § 103(a)

The Examiner has rejected claims 6, 9 and 24-31 under 35 USC § 103(a) as being unpatentable over Kovesdi et al. (US 6,998,263), Zabner et al. (Journal of Virology, 73:8689-8695, 1999), Chillon et al. (Journal of Virology, 73:2537-2540, 1999), Chillon et al. (Genbank Accession No. AAD20325, 1999) and Davidoff et al. (Journal of Surgical Research, 83:95-99, 1999).

Claim 6 has been cancelled.

Claim 24 recites a method of transducing a cell lacking CAR comprising contacting the cell with an expression vector comprising an Ad backbone nucleic acid sequence and polynucleotide encoding a chimeric adenovirus (Ad) fiber polypeptide comprising at least one of the following: a tail region, a shaft region and a knob region, wherein the polynucleotide encoding a chimeric Ad fiber polypeptide encodes SEQ ID NO:1, encodes amino acids 46-188

of SEQ ID NO:1, encodes amino acids 189-371 of SEQ ID NO:1, or wherein the polynucleotide comprises SEQ ID NO:12, comprises nucleotides 1-564 of SEQ ID NO:12, comprises nucleotides 1-135 of SEQ ID NO:12, or comprises nucleotides 136-564 of SEQ ID NO:12. Claims 25-31 depend either directly or indirectly from claim 24.

Claim 9 recites the method of claim 24, wherein the polynucleotide encoding a chimeric Ad fiber polypeptide comprises nucleotides 1-135 of SEQ ID NO:12.

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), the framework for the objective analysis of determining obviousness under 35 U.S.C. § 103(a) is stated in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual analysis involves (1) determining the scope and content of the prior art, (2) ascertaining the differences between the prior art and the claims at issue, and (3) resolving the level of ordinary skill in the pertinent art. Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. Such evidence, often called "secondary considerations," may include evidence of commercial success, long-felt but unsolved needs, failure of others, and unexpected results. Cited documents must be considered in their entirety, and it is not permissible to pick and choose from any one document only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such document fairly suggests to one of ordinary skill in the art (see, e.g., *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 U.S.P.Q. 416 (Fed. Cir. 1986) and *In re Wesslau*, 353 F.2d 238, U.S.P.Q. 391 (C.C.P.A. 1965)).

None of the cited references teach or suggest the nucleotide sequence of SEQ ID NO:12. Chillon et al. (Genbank Accession No. AAD20325, 1999) teaches an amino acid sequence, a portion of which is comparable to the amino acid sequence of SEQ ID NO:1. It is well-settled law, however, that a

prior art disclosure of the amino acid sequence of a protein does not necessarily render particular DNA molecules encoding the protein obvious because the redundancy of the genetic code permits one to hypothesize an enormous number of DNA sequences coding for the protein. No particular one of these DNAs can be obvious unless there is something in the prior art to lead to the particular DNA and indicate that it should be prepared.

In re Deuel, 51 F.3d 1552, 1558, 34 USPQ2d 1210, 1215 (Fed. Cir. 1995). Since a material difference exists between the cited art and claims 9 and 24-31, claims 9 and 24-31 are patentable over the cited art. Applicant respectfully requests that this rejection be withdrawn.

Claim Objections

The Examiner has objected to claim 24 because of the following informalities: the recitation of "encodes nucleotides" on lines 8 and 9 of claim 24 sounds confusing since in line 5 of the same claim, the recitation of "wherein the polynucleotide encoding a chimeric Ad fiber polypeptide" is directed to amino acid sequences. Applicants have amended claim 24 to delete this phrase.

The Examiner has objected to claims 3-5, 7, 8 and 11-13 as being dependent upon a rejected base claim, but has indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3-5, 7, 8 and 11-13 all depend from claim 24. Applicants assert that since amended claim 24 is patentable, claims 3-5, 7, 8 and 11-13 are patentable as well. Applicant requests the withdrawal of this objection.

Applicant : Beverly L. Davidson et al.
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CONCLUSION

The Examiner is invited to contact Applicant's Representative at the below-listed telephone number if there are any questions regarding this Response or if prosecution of this application may be assisted thereby. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3503. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account 50-3503.

Respectfully submitted,

Beverly L. Davidson et al.

By their Representatives,

Viksnins Harris & Padys PLLP

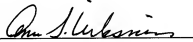
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Date: 25 February 2008

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